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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,048	04/05/2007	Lotte Madsen	P69377US1	7119

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COLOPLAST A/S  
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EXAMINER
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LEWIS, KIM M

ART UNIT	PAPER NUMBER
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3772

NOTIFICATION DATE	DELIVERY MODE
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10/29/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@coloplast.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/581,048	<b>Applicant(s)</b> MADSEN ET AL.	
	<b>Examiner</b> Kim M. Lewis	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 19-21, 24 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18, 22, 23 is/are rejected.
- 7) ☒ Claim(s) 6 and 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 6/21/09 has been received and made of record. As requested, claims 1, 4, 14, 23 and 25 have been amended, and claims 19-21, 24 and 25 have been cancelled.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5, 10 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. As regards claim 5, "the adjoining line" lacks proper antecedent basis.

5. As regards claim 10, A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a)

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merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 10 recites the broad recitation less than 5 cm<sup>2</sup>, and the claim also recites “at most 4 cm<sup>2</sup>, “at most 2 cm<sup>2</sup>” and “the range of 1-cm<sup>2</sup>” which is the narrower statement of the range/limitation.

6. As regards claim 23, “said opening portion” lacks proper antecedent basis.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-5, 8, 9, 11-14, 16 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,753,232 (“Ward”).

9. As regards claim 1, Ward disclose an adhesive wound dressing that anticipates applicant’s presently claimed invention. More specifically, Ward discloses dressing product (1) comprising: a dressing sheet (3), one first surface of which is provided with an adhesive (4), whereby said first surface defines an adhering surface for attaching the dressing sheet to an anatomical surface of a living being; a carrier system (5,11) defining a gripping section for handling of the carrier system by human fingers, the

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carrier system providing a support for the dressing sheet and at least a part of the carrier system is attached to the dressing sheet by said adhesive; the dressing sheet being releasably connected to the carrier system, so that the carrier system can be separated from the dressing sheet during application thereof, wherein the carrier system comprises a supporting section and a protective sheet in coplanar alignment, said supporting section and protective sheet adjoined along a common non-overlapping boundary by member (12), wherein a first portion (5) of the supporting section is adhered to the adhering surface of the dressing sheet to define an overlapping region and a second portion (11) of the supporting section that is not adhered to the dressing sheet when the first portion is adhered to the dressing, the second portion defining a non-overlapping region (see Fig. 2).

10. As regards claim 2-4, the area between members (5 and 11) is a slit that can be a fold line and is the edge area along which the supporting section and the protective sheet are adjoined.

11. As regards claim 5, the slit and adjoining line are one in the same and therefore are parallel.

12. As regards claim 8, note Fig. 2. With respect to the bending stiffness, since the carrier system is for application of the dressing, then the claimed property is inherent.

13. As regards claim 9, note Fig. 1 of Ward.

14. As regards claim 11, members (5) and (11) may separated when tension is applied to the carrier system.

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15. As regards claim 12, applicant should note that the members (5) and (11) are integral in that they are connected via portion (12) which thereby constitutes a unitary whole. Also, note the line between the members (5) and (11).

16. As regards claims 13-14, col. 8, lines 28-33 disclose the protectors as being silicone release coated papers and plastic (e.g. Steralease No. 15). These releasable protectors are inherently stiffer than the dressing films that they protect in order to prevent the dressings from wrinkling.

17. As regards claim 16, note col. 7, lines 46-51.

18. As regards claim 17, note col. 7, lines 31-40.

19. As regards claim 22, the method is practiced by use of the dressing as discussed in claim 1 above.

### ***Claim Rejections - 35 USC § 103***

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
22. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ward
23. As regards claim 10, Ward discloses at col. 8, lines 34-38, that the dressing has a size of 8x8 to 20x20 and fails to teach the claimed surface areas. However, it has been held that a change in size of a prior art device is a design consideration within the level of ordinary skill in the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).
24. Claims 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward in view of U. S. Patent No. 6,303,700 ("Chen")
25. As regards claims 15 and 18, Ward fails to teach hydrocolloid particles in the adhesive layer, as well as a medicament in the adhesive. Chen, however, teaches that it is conventional in the art to provide hydrocolloid particles in an adhesive for use on a wound in order to absorb wound exudate. Further taught is the use of medicaments in the adhesive for the purpose of treating the skin or wound. Thus, it would have been obvious to one having ordinary skill in the art to substitute the adhesive of Ward for the adhesive of Chen which includes hydrocolloid particles and/or medicaments, in order to allow the adhesive wound dressing to absorb wound exudate and to treat the wound.

***Allowable Subject Matter***

26. Claims 6 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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27. Claim 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Monday to Wednesday, from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kim M. Lewis/  
Primary Examiner  
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Kml



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October 26, 2009